(1) MESSAGE FROM THE ASSEMBLY—*cont.*

MR. CHAIRMAN : I have also received message from the Deputy Speaker, Legislative Assembly, transmitting copies of the Madras Agricultural Income-tax (Extension to Added Territory) Bill, 1961 (L.A. Bill No. 23 of 1961) as passed by the Assembly for the recommendations of the Council and certifying that the Bill is a Money Bill within the meaning of Article 199 of the Constitution of India.

III.—GOVERNMENT BILLS.

(1) THE MADRAS WAKF (SUPPLEMENTARY) BILL, 1961 (L.A. BILL NO. 10 OF 1961).

* THE HON. SRI M. BHAKTAVATSALAM : Mr. Chairman, I move—

'That the Madras Wakf (Supplementary) Bill,[a] 1961 (L.A. Bill No. 10 of 1961), as passed by the Legislative Assembly, be taken into consideration.'

This is a simple measure to amend the Wakf Act. The original Act was a Central Act. It was passed in the Parliament in 1954. This subject is in the Concurrent List. The object of the Act is to control and ensure better administration of the Muslim religious endowments. Under the definition in the original Act, Muslim endowments would mean only those endowed by persons of Mohammedan religious persuasion. But there are cases particularly in this State—in the districts of Thanjavur and Tiruchirappalli—wherein Muslim religious endowments have been endowed partly or wholly by Hindu rulers. There were people of other religious
10-50 a.m. persuasions who have endowed for Muslim religious institutions. Hon. Members are also aware that there are also similar cases of Hindu Religious Endowments endowed by the former Muslim rulers. There are also cases during the British regime, where officers of the British Administration in India endowed for the benefit of the Hindu religious institutions, particularly temples. This only shows that people, particularly in the old days, were quite broadminded and they did respect the religious sentiments of others and they did actually support and aid the religious institutions although they might not themselves be interested in the religious worship.

So far as this Wakf Act is concerned there is a difficulty in the application of the Act in this State. We therefore suggested to the Central Government that they might undertake necessary legislation to rectify the difficulty so as to include in the definition Wakfs endowed by persons other than Muslims. But the Government of India suggested that we might ourselves undertake the legislation so far as our State is concerned. Hence this Bill has been brought forward and I hope that this Bill will be accepted by the House.

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[a] Printed as Appendix I on pages 127–128 infra.

29th March 1961]

MR. CHAIRMAN: Motion moved—

'That the Madras Wakf (Supplementary) Bill, 1961 (L.A. Bill No. 10 of 1961), as passed by the Legislative Assembly, be taken into consideration'.

SRI K. BALASUBRAMANYA AYYAR: Mr. Chairman, Sir, the object of the Bill is quite commendable and I have nothing to say against it. The Central Act defines a wakf as a permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by Muslims as pious, religious or charitable. Now this Bill of ours so far as this State is concerned wants to modify that definition by including all property given or endowed by any person professing any religion other than Islam for the support of Muslim institutions. But so far as I can see the Mohammadan law on the subject does not seem to be quite conclusive. In this connection I would like to refer to what Amir Ali has said in his Tagore Law Lectures. There he had come to the conclusion that a Muslim cannot make a dedication in favour of an idol and a non-Muslim place of worship or any other object which is considered unlawful or sinful according to Muslim law, nor can a non-Muslim validly make a dedication for a Muslim place of worship and so on. He is a great authority on Mohammadan law. Afterwards there was a decision in our High Court which is relevant to our Bill. Justice Wallace in his decision said that it was not uncommon for persons like zamindars and mirasdars and others in estates where there were Hindu and Muslim inhabitants to make endowments of property for the Mohammadan institutions and he would hesitate to declare such endowments invalid merely on the presumption that there could be no exception of any kind to the Mohammadan law that any wakf could be endowed by a Mohammadan. Therefore the general law is that a non-Mohammadan cannot endow property for a Muslim institution. But Justice Wallace said he could not take it as an exception to that rule merely on the presumption and therefore he said he would hesitate to hold those properties as invalid. This is rather not a very definite declaration of the law. He says he would hesitate to hold. That matter went up to the Privy Council and the Privy Council declined to decide the question. So the state of the law in the matter is in this fluid condition.

Then, Sir, the main Act was passed by the Central Government and if any amendments have to be made to the original Act, it should be made by the Central Government after proper enquiry, because, elsewhere there is very strong Muslim feeling in the matter rather than in Madras State. It would have been perfectly all right if they had brought in the amendment. But it is rather unfortunate that the Centre should suggest that we should do it here especially when the Muslim Law on the matter is not very clear. The Privy Council refused to give a decision in the matter and I do not know whether they would decide it now. I have not looked into the latest law. The Government have their law officers to advise them. But so far as I am concerned and my inves-

[Sri K. Balasubramanya Ayyar] [29th March 1961

tigation goes Mohammadan law as mentioned by the great authority seems to hold that a non-Mohammadan cannot endow property for Muslim institutions.

Therefore the best thing under the circumstances would have been for the Central Government to take up this matter. In the Uttar Pradesh there is a large volume of Muslim opinion about it. We must try always to be very careful in such matters. With regard to the Hindu endowments we can do anything but not so with the Muslim endowments. They are very sensitive. (Sri Mohamed Raza Khan: Not now.) It is a different matter. The hon. Member is a Hindu-Mohammadan. There is no difficulty so far as we are concerned and I am not dissatisfied with that position. I am really happy so far as Madras is concerned. But we do not know the feelings and the opinions of the Muslims there. A Mohammadan cannot make an endowment for idol worship. It is against Muslim law. Hindus have no objection to accept the endowment but so far as the Muslim law is concerned they will not accept any dedication of property by non-Muslims for Muslim institutions. Wakf means dedication of property, tying of property in the name of God for serving the poor. It is a good idea. I do not quarrel with it. It is a good statement. But the difficulty is as was pointed out by me earlier, Amir Ali, a great authority on Mohammadan law and a Member of a judicial committee, says that just as a Mohammadan cannot dedicate property for the purpose of idol worship, similarly non- Muslims cannot didicate property for Muslim institution. Therefore, so far as the Muslim law is concerned, there will be difficulty if any one wanted to enforce an agreement. It cannot be enforced according to the existing law. I could have given an amendment to the relevant clause but there was some difficutly and want of time also.

Sri T. P. SRINIVASAVARADAN: Did not Muslims endow property to the Hindu institutions?

Sri K. BALASUBRAMANYA AYYAR: I am not concerned with the attitude of particular persons or the merits of individual cases. I heartily accept them. Tippu Sultan gave large grants to Singeri Mutt. To the Chidambaram temple he gave a big emerald which adorns the deity thee. I am happy about all that. But what we are now concerned with is the legal aspect of the matter.

Sri T. P. SRINIVASAVARADAN: Why did he violate the Muslim law?

Sri K. BALASUBRAMANYA AYYAR: The hon. Member should ask Tippu Sultan why he violated the Muslim law. What am I to do for it? The statement in the law is that non-Mohammadans cannot dedicate property for Muslim institutions. I am not stating this law. It has been so stated by Amir Ali. He says just as Muslims will never give and ought not to give—according to Muslim law and not according to our British law or our general law—according to the Muslim law, Muslim institutions cannot

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also accept dedication of property by non-Mohammadans. He says that on parity his proposition held good. I would suggest therefore to the Government to add : 'notwithstanding anything contained in the Mohammadan law to the contrary' to the amendment. Then it would be a very good thing and we may leave it to the Central Government to bring in this amendment because this affects a large Muslim population in Northern India. Because somebody says you should pass the law why should you do it? It is a Central Act and the law says that Wakf is a permanent dedication of property by a person professing Muslim law. As soon as the Government start proceedings on account of the misbehaviour of, or expropriation by, any one, somebody will say that the Muslim law is affected, and that it is against the Constitution. Therefore, Sir, for the purpose of effectively administering the Act, I suggest that the Government write to the Central Government and say, 'The best thing under the circumstances is for you to do it'. The definition given of 'wakf' in Central Act 29 of 1954 is— 11-00 a.m.

"'wakf' means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes ".

When this is so, and when this is not altered, it is not for us in Madras to bring in this legislation. There is no use of saying that it is a good thing and that proper control is called for. It is a question of Muslim law we are dealing with. Why should we bring in this legislation here instead of the Centre bringing it before Parliament? I understand that so far as the Madras Government are concerned, there is concurrent jurisdiction and they can bring in this Bill. The Centre also has equal powers and it can legislate for Madras. This is a thing which the Madras Government should remember. If the Central Government take up this matter, and the Muslim opinion supports them, then it is all right. It is a different matter altogether. Otherwise if somebody goes there and an agitation starts saying that Muslims are badly dealt with, we will find the situation difficult later on. It is for this Government, if they are satisfied, to write to the Central Government and say 'This is the point of view of the Madras Muslims; so far as the law is concerned, it is very nebulous; we are bound to bring this to your notice'. There is the judgment of Wallace. Wallace used to say, 'I hesitate to declare'. He is a European Judge, and he may not know the whole law. Sir, this Government should have written to the Central Government 'No; please do it yourself'. That is the best thing that they should have done.

* SRI M. PATANJALI SASTRI : Sir, I do not feel oppressed in the same manner as the Deputy Leader of the Opposition by the rule of the Muslim Law. Sri Balasubramanya Ayyar said that the law seemed to be not very clear on the subject. There is no doubt that the high authority of Amir Ali's Lectures on Muhammadan law is there. But much water has flowed down the Hooghly

[Sri M. Patanjali Sastri] [29th March 1961

since he delivered the Tagore Law Lectures. (Sri K. Balasubramanya Ayyar : Much blood also has flowed). The Privy Council has not given a definite pronouncement. But from my experience of the Supreme Court, I can say that if this matter is brought at this stage, I do not think there will be that hesitation which is indicated by Justice Wallace. The Supreme Court is moving with the times. Certainly it will be more in consonance with the spirit of the times to recognise such dedications as valid dedications. The Madras Legislature is competent to deal with this matter which is in the Concurrent List. When this Legislature says that the term ' wakf ' shall include all property given or endowed by any person professing any religion other than Islam for the support of mosques, etc., no rule of Mohammadan law can possibly come into conflict. The Deputy Leader of the Opposition suggested the insertion of the words ' Nothwithstanding anything contained . . ' That of course is implied here. Whether it is stated so or not, that is the necessary implication. We say, ' . . . shall include all property given or endowed by any person professing any religion other than Islam '. Sir, I do not think that the statement of Amir Ali on Muhammadan law in the Tagore Law Lectures is going to affect very much nor will there be any difficulty about the validity of these dedications.

Sri ABDUL HAMEED KHAN : Sir, I welcome this measure. I am sorry that Sri Balasubramanya Ayyar brought in things which were not germane to the subject before the House. There are certain endowments made by Muslims, and they have to be properly administered. The present Bill seeks to control all endowments by Muslims or non-Muslims. If we do not include the endowments made by non-Muslims in the Act, then there will be no control over them. It is only for the purpose of bringing those endowments under proper administration this Bill is brought forward. To bring in the question of Muslim opinion and Muslim influence is rather unfortunate. The hon. Member thought it fit to speak in the manner that he has done this morning. As pointed out by the hon. Member Sri Patanjali Sastri, I do not think that there is anything which affects the right of this legislature to pass a measure like this. It is only with the consent of the Government of India that this measure is brought in here. In the circumstances, it is very necessary that this measure should be passed by this legislature. I do not think much need be said about this. If I had anything to say, that is because of the speech of the hon. Member Sri Balasubramanya Ayyar. All that he said was beside the point. An able lawyer that he is, he need not have brought in Amir Ali for discussing this measure. (Sri K. Balasubramanya Ayyar : He brought himself in; he wrote not for my purpose.) I have already said that he need not have brought him in. This measure does not need his help. In the circumstances, I request the Government and this House to pass this measure.

Sri MOHAMED RAZA KHAN : Mr. Chairman, Sir, we thought that a measure of this type would be passed within a few minutes. But it has brought out some of the legal talents here.

29th March 1961] [Sri Mohamed Raza Khan]

Before I proceed to discuss the points made by my esteemed friend Sri Balasubramanya Ayyar who wants to see that the legal position is always maintained, I like to say that I do appreciate the steps taken by the Government to bring in this measure. Mr. Abdul Hameed Khan thinks that this subject comes within the concurrent list. Sir, even if we take the Hindu Religious Endowments Act into consideration, we see that it differs from place to place. In fact the Central Government are examining the Madras Act so that it can be copied by other States. No doubt for a long time the Muslims desired and felt the necessity for an Act like this. There were also attempts in regard to this matter, but unfortunately those attempts were based more on political factors than on the realities of the situation. This Act, which comes under the concurrent list, was passed in a hurried way in the year 1952–53, when the Leader of the House Mr. Venkataraman was a member of Parliament. (The Hon. Sri R. Venkataraman : I was not there then.) If he was there, possibly he might have devoted some attention to this legislation. The first thing that I would like to say is this. The Hon. Minister ought to have told this House as to how this particular amending Bill originated. Was it on his own initiative or on the representation made by the Centre or by the Madras Wakf Board that there were certain endowments by Hindu gentlemen and that they should be brought within the operation of the Act? This information also could be given to us as to how many endowments there are and what their income is. Before proceeding to say a word on the points raised by Sri Balasubramanya Ayyar, I think it would be much better particularly for the Home Minister, who is an authority on Hindu Religious Endowments with all his experience of running the Hindu Religious Endowments, to have the entire thing amended to suit local conditions. There are so many defects and lecunae in the Act. It is known that one section is clashing with another, and sometimes even the rights are taken away. Let me stretch my argument further. It is stated that only one member out of ten or eleven on the Board should be a man connected with the trust. I do not see any logic in this provision. Why do you suspect people whose forefathers have endowed all that they had for religious purposes? Why do you exclude them from the Board by saying that they will have only one seat on the Board? I do not understand the logic or the justification for this provision. Again, Sir, I can understand a provision which says that one of the members shall be a member of the legal profession or a man with wide experience or a member of the Legislature and so on. But what is this provision, that there should be a man representing a political party--the Jamiat-Ul-Ulema? They are camp followers of the party in power. I do not think we can bring in a party here. Then, Sir, there is too much power in the hands of the Government. We know how the Government decide, for example, the composition of the Board. Whomsoever they want, they can have on the Board. They may choose X, Y or Z and say, 'this is our list' and we have to accept it. There is no provision to include men who could help and who possess a representative capacity. Apart from

11-10 a.m

this, what happens when the political party which is supposed to have one representative on the Board ceases to exist? Suppose a man from a particular sect says that it ceases to exist. What happens? I do strongly feel that the Government, if time permits, should either this year or next year see that the Act is amended suitably. Mr. Balasubramanya Ayyar's point was rightly met by Mr. Patanjali Sastri. I am not a lawyer to pronounce an opinion on the Amir Ali statement. We do not know under what circumstances the opinion was pronounced. We do not know either whether the case came about on account of any Hindu objecting to endowment for Muslims or Muslim objecting to endowments by Hindus. Mr. Sastri rightly said that we need not be bothered about others' opinion and that the will of the Legislature was always there. If there was anything wrong, hundreds of Hindus and hundreds of Muslims would have gone to courts but nobody has done it. We take some pride and it is very much proclaimed in the north, though not very much in the south, that Tippu Sultan endowed so much money for Hindu temples. Whether Mr. Balasubramanya Ayyar agrees or not, we are not expected to encourage idol worship. Various Muslims may say, ' We will give money but we will not say for what purpose '. If they stated the purpose openly, then many people would have gone to courts. The Home Minister refers with immense pride to what Tippu Sultan has done. I do not know whether he referred to him for the sake of arguing his case. But anyway, people may remember the good things which he has done and I support the measure in the hope that the Government would bring in an amending Bill very soon.

SRI ABDUL HAMEED KHAN : With regard to . . .

MR. CHAIRMAN : The hon. Member cannot make a second speech.

SRI ABDUL HAMEED KHAN : I am not making a second speech. I want Mr. Raza Khan to withdraw his remarks about that religious body, Jamiat-Ul-Ulema. They are not camp followers of any party.

SRI MOHAMED RAZA KHAN : They are.

THE HON. SRI R. VENKATARAMAN : There is a difference of opinion. Let both opinions go on record. (Laughter.)

SRI MOHAMED RAZA KHAN : With your permission, may I answer Mr. Hameed Khan? A little while ago it was a case between me and Mr. Balasubramanya Ayyar. Now it has turned to be one between me and Mr. Hameed Khan. It is a body of individuals taking part in politics. Everybody cannot become Moulvi. Whatever Mr. Hameed Khan may say, I am sorry, I have to stand by my statement. I am not going to withdraw my remarks.

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THE HON. SRI M. BHAKTAVATSALAM: Sir, it has also been my view that the Government of India should have undertaken this piece of legislation. We did suggest that to the Government of India but they suggested back to us that we ourselves might undertake it. That is why I am before the House with this Bill.

While considering this, I would humbly submit that what is the Mohammaden law on the subject is not relevant; nor are what eminent men like Amir Ali have said and the decisions of the High Court or the Privy Council. These are not relevant matters for our purpose. The institutions are already there and the question is whether they should be administered better and whether there should be a machinery for such better administration. I said, there were many institutions in Tanjore and Tiruchirappalli districts. There is the famous Darga in Nagoor and ninety per cent of the worshippers are Hindus. Several people go there and offer worship. I would say it is purely a Muslim institution. It is cent per cent a Muslim institution. Only there is sufferance on the part of Muslims when they allow such worship. Just as Hindus go there, Muslims worship at Palni and they are not prevented. Still, these institutions are cent per cent Muslim institutions even though Hindus worship there. If they are not properly administered, then it is but necessary that Government should arrange for their proper administration. And that cannot be done under the present Wakf Act. There is this big Orphanage on the Mount Road, the Anjuman. It is a big trust and it runs a very good orphanage. The late Sir Mahomed Usman was strongly protesting to me in this House so many times that a completely Muslim Board should not take over the administration of this institution because there were several Hindus who had made contributions to that institution. He considered it illegal and improper to entrust its administration to the Board. He said: 'You cannot touch it'. So, that means that if the interpretation of the Mohammadan law is to be strictly applied to the control of these institutions, you will have to leave them to the charge of those who for the present 11-20
are in charge of the institutions to manage them as they please. a.m.
There can be no remedy even if there is maladministration. That would be the result if we accept that position.

However, Sir, there was a conference, a two days' conference in Delhi three or four months back presided over by the Central Minister in charge of the subject. I also attended the conference. Several Ministers from the other States and representatives attended the conference. Several learned, religious minded, pious Moulvis too attended the conference. In that conference I pointed out this particular difficulty. They did not demur and say that we should not bring them under the Wakf Act. The only thing was, the Government of India said that we might ourselves undertake this amending legislation.

Then, Sir, about the difficulties pointed out by the hon. Member Sri Mohamed Raza Ghan, some of these difficulties were also discussed in that conference and the Government of India Ministry

concerned did take note of these and said they would consider what amendments should be brought forward in the Lok Sabha. Therefore we should leave those things to the Lok Sabha. We need not take them up here. This particular legislation we took up because the Government of India would not do it. We felt the need for it. They suggested we might ourselves do it. Therefore we took up this amendment. The other things we must leave to the Government of India. We cannot afford to bring in comprehensive amendments to the original Act.

Regarding the administrative machinery that we are to have for the administration of Wakfs, so far as this State is concerned, it will be a Board consisting exclusively of Muslims, no doubt of pious Muslims. No Hindu will be there. Even when we had to appoint a special officer to undertake service, we appointed only a Muslim in consultation with the Wakf Board. Ever since the State Board started functioning I do not remember there was any occasion for the Government to interfere with the administration except that we offered them some help. They could not start their work without any funds. They had no funds to start with. We offered a loan of Rs. 1 lakh and we paid them Rs. 50,000. This was a revelation when I mentioned it at the Delhi Conference. The other States' Muslim representatives said that it was revelation for them that the Government was good enough to offer this aid in order to enable the Wakf Board in Madras State to start functioning effectively. Therefore we are not interested in interfering with the administration. It is for the Wakf Board to administer. If there is maladministration of funds they will take necessary action in the matter. Whenever they seek the aid of the Government, Government would offer aid. Otherwise Government would not interfere with the administration of the Board or the Wakfs. Therefore I do not think there will be any difficulty in this House accepting this amending Bill which is very simple.

MR. CHAIRMAN : The question is—

'That the Madras Wakf (Supplementary) Bill, 1961 (L.A. Bill No. 10 of 1961), as passed by the Legislative Assembly, be taken into consideration '.

The motion was put and carried and the Bill was taken into consideration.

Clauses 2 to 4 were put and carried.

Clause 1 and the Preamble were put and carried.

THE HON. SRI M. BHAKTAVATSALAM : Mr. Chairman, Sir, I move—

'That the Madras Wakf (Supplementary) Bill, 1961 (L.A. Bill No. 10 of 1961), as passed by the Legislative Assembly, be passed.'

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MR. CHAIRMAN : The question is—

'That the Madras Wakf (Supplementary) Bill, 1961 (L.A. Bill No. 10 of 1961), as passed by the Legislative Assembly, be passed.'

The motion was put and carried and the Bill was passed.

(2) THE MADRAS AGRICULTURAL INCOME-TAX (AMENDMENT) BILL, 1961
(L.A. BILL NO. 12 OF 1961).

* THE HON. SRI M. A. MANICKAVELU : Mr. Chairman, Sir, I move—

'That the Madras Agricultural Income-tax (Amendment) Bill, [a]1961 (L.A. Bill No. 12 of 1961), as passed by the Legislative Assembly, be taken into consideration.'

In the Madras Plantations Agricultural Income-tax Amendment Act, 1958, a special provision was made to collect tax for the assessment year 1958–59 applying the composition formula. The above provision was extended for the assessment years 1959–60 and 1960–61 to enable the assessees who would not have maintained proper accounts for the accounting years 1958–59 and 1959–60 to apply for composition. As it is considered that the assessees would not have maintained proper accounts for the accounting year 1960–61 also, it is proposed to extend the benefit of section 34 in respect of the assessment year 1961–62 also by suitably amending that section. The Bill accordingly provides for the application of composition formula to the assessment year 1961–62 also. This is only an extension of the formula for another year, namely, 1961–62. I hope the House will accept it.

MR. CHAIRMAN : Motion moved :

'That the Madras Agricultural Income-tax (Amendment) Bill, 1961 (L.A. Bill No. 12 of 1961), as passed by the Legislative Assembly, be taken into consideration.'

SRI K. BALASUBRAMANYA AYYAR : The Government are extending this provision every year. They extended it for two years and now they want to extend it for another year. They would want to extend it for the next year, that is, 1962–63 and thus go on extending year after year.

THE HON. SRI M. A. MANICKAVELU : Not likely for the reasons that I am going to state just now.

SRI K. BALASUBRAMANYA AYYAR : That is what I wanted to know. Every year it has been extended. I hope it would be better to make it a permanent provision.

THE HON. SRI M. A. MANICKAVELU : It will come along with the Land Ceiling Bill.

SRI K. BALASUBRAMANYA AYYAR : Then there will be no question of agricultural income-tax. That seems to be the idea of the Government. It is all right. I hope this will be the last time that the provision is to be extended for another year.

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a Printed as Appendix II on page 128 infra.